



2011

MAKING CHANGES IN THE WORKPLACE – MEETING YOUR OBLIGATIONS

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Collective Bargaining Under the Statute

- Bargaining
- Conditions of employment
- Factors Affecting Good Faith
- Two Dimensions: Duty and Scope
- First Dimension: Duty to Bargain
- What is a Change?
- Management Obligation in a Change Situation
- Questions to Ask
- Second Dimension: Scope of Bargaining
- Direct Interference
- Impact and Implementation Bargaining
- Permissive Bargaining

Collective Bargaining

- Mutual obligation of the parties
 - Meet at reasonable times
 - Consult and bargain in good faith
 - Effort to reach agreement on conditions of employment
 - Execute a written agreement
 - Upon request by either party
 - Not compelled to agree or make concessions

Conditions of Employment

- Personnel policies, practices, and matters affecting working conditions
 - Established by
 - Rule
 - Regulation
 - Otherwise
- Exceptions
 - Personnel policies, practices, and matters relating to
 - Prohibited political activities
 - Classification of positions
 - Specifically covered by Federal statute

Conditions of Employment and Working Conditions...

- *“You say ‘tomato’...”*
- Used interchangeably by practitioners
- Not defined by the Authority and the courts
 - Dissent by prior Chair of the Authority
 - Similar, but not the same...
 - Rejected in September 2009
- COE and WC are synonymous
- *“Lets call the whole thing off...”*

Factors Affecting Good Faith Bargaining

- Approach bargaining with a resolve to reach agreement
- Have authorized members at the table
- Meet as frequently as necessary
- Avoid unnecessary delays
- Execute and implement agreements

Dimensions of Collective Bargaining

- Duty to Bargain
 - Answers the question, “Whether and When do I bargain?”
- Scope of Bargaining
 - Duty to bargain exists; and,
 - Answers the question, “What do I bargain?”

First Dimension: The Duty to Bargain

- When does the duty arise?
 - Term negotiations
 - New agreements
 - Expired agreements
 - Proposed changes to conditions of employment*
 - Mid-term proposals
 - Subjects not already bargained

Is it a Change?

- The Authority will examine
 - Case-by-case facts and circumstances
 - Agency conduct
 - Affect on conditions of employment
- Not a change...
 - Enforcing a collective bargaining agreement
 - Enforcing established past practice

Management Obligation in a Change Situation

- Provide union:
 - Reasonable notice
 - Opportunity to request bargaining
- Respond to union request to bargain
- Bargain to the extent required by the Statute
- Maintain *status quo* until bargaining completed
- Cooperate with FSIP if utilized prior to implementation

Questions to Ask

- Is the change *de minimis*?
- Is the change covered by the labor agreement?
- Did the union waive its right to bargain?
 - Inaction
 - Contract requirement
- Proposal negotiable at all?
- Is it a proper mid-term proposal?
 - Proposal must not be “covered by” existing agreement

Second Dimension: Scope of Bargaining

- Must resolve “duty to bargain” question first
- If “duty to bargain” exists:
 - Substantive bargaining
 - If not an exercise of reserved management rights
 - If management makes an election to bargain permissive topic
 - Procedures Agency will follow
 - Exercise of reserved rights including permissive topics
 - Appropriate arrangements Agency will follow
 - If employees are adversely affected by exercise of management right
- No duty to bargain over provisions not consistent with law

Scope of Bargaining Limitations

- Management Rights
 - Proposal may not directly interfere
- Permissive topics
 - If no election to bargain substance, mandatory bargaining on procedures
- Procedures
 - May not directly interfere with management right

Scope of Bargaining Limitations

- Appropriate arrangements
 - May not abrogate (waive) a management right
 - May not limit the Agency from acting at all
 - Must deal with adverse affects flowing from management's exercise of its reserved rights
 - Must be specifically tailored to deal with the harm
 - Union should specifically identify proposal as an appropriate arrangement
- New Standard of Review
 - Affect on management negotiators

E.O 13522 and Pre-decisional Involvement

- What is PDI under the E.O.?
 - Employees and union representatives “engage” prior to final decisions on all workplace matters
 - Without regard to obligation under the Statute
 - Expeditiously share information not restricted by law
 - Include those issues covered by 7106(b)(1)
- Where does it happen?
 - Forums or councils at national or local level
- Management evaluates efficiencies

Agency Head Review

- Required by Statute
- In DoD, delegated to CPMS, LERD
- All agreements subject to review
 - Initial and term
 - Mid-term
 - Supplemental
 - MOA's/MOU's
- No exceptions!

Examples of Proposed Changes

- Using the framework you learned in class
 - Analyze the scenario
 - Determine
 - Duty to bargain
 - Scope of bargaining
 - Identify challenges
 - Develop solutions
- Provide feedback to the class

End of Unit II

- **Questions?**
 - **Collective Bargaining Under the Statute**
 - **Agency Head Review**
- **Look us up or give us a call...**
 - **On the web: www.cpms.osd.mil**
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